Colorado Department of Public Health and Environment ***Health Facilities and Emergency Medical Services Division*** ***Policy Manual***	Section: Part:
Subject: **INFORMAL DISPUTE RESOLUTION**	Page:
Date: Revised October 2012	☐ Replacement page(s) of part _____ ☐ Addition of page(s) to part _____ ☐ New Section

SUMMARY

This Policy & Procedures document addresses the manner in which the Health Facilities and Emergency Medical Services Division (the "Division") provides for Informal Dispute Resolution ("IDR") of health and life safety deficiencies for long-term care ("LTC") facilities that are certified to receive payment under Medicare or Medicaid programs, and non-long term care ("Non-LTC") providers, including assisted living residences ("ALRs").

Title 42 CFR Section 488.331 and State Operations Manual (SOM) Section 7212 and Section 2728 provide authority for IDR for LTC facilities and Federally-certified non-LTC facilities and agencies, but do not specify how the IDR process is to be implemented. There is no legal authority requiring the Division to provide an IDR process for other non-LTC providers and ALRs.[1] Regardless of the absence of any other legal authority or requirement, the Division recognizes the importance of providing a mechanism by which all non-LTC providers and ALRs may petition for review of cited deficient practice as a result of survey and complaint investigations.[2]

This policy addresses IDR for providers as follows:

ATTACHMENT I - IDR procedures for LTC/ALRs.
Except as set forth in ATTACHMENT I, a committee shall conduct the initial review and issue recommendations regarding IDR requests. See **ATTACHMENT I** for the procedural and substantive provisions for these facilities.

ATTACHMENT II – IDR procedures for Programs other than LTC/ALR**.**
The Section Chief, Program Manager or designee, following initial review by the author of the deficiency, shall review the IDR request. See **ATTACHMENT II** for the procedural and substantive provisions for these programs.

ATTACHMENT III - IDR procedures for Life Safety Code (LSC) violations
Except as set forth in ATTACHMENT III, one impartial inspector from the LSC program shall conduct the review and issue recommendations regarding IDR requests. Recommendations may be forwarded to the Program Manager. See **ATTACHMENT III** for the procedural and substantive provisions.

[1] There is a limited exception to this provided in Section 25-27-106, C.R.S. (2002). This is addressed in Attachment I, Section II B.

[2] The exception to this is IDR for hospitals; the Division does not provide IDR for citations resulting from federal hospital surveys. The regional office of the Centers for Medicare and Medicaid Services provides IDR following such surveys.

PURPOSE

The purpose of IDR is to provide facilities and/or agencies an informal opportunity to challenge the **facts and evidence** surrounding the disputed deficiencies. **This IDR process constitutes an informal administrative process that in no way is to be construed as a formal evidentiary hearing.**

The Division does not provide for any telephone or in-person discussion between the provider and the Division regarding the merits of the deficiency after it has been issued. Regardless of the specific IDR procedures followed and set forth in **ATTACHMENTS I – III,** final determination of disputed deficiencies is vested in the Division and/or the CMS Regional Office.

Failure of the Division to meet any of the time frames identified in this Policy shall not invalidate the deficiency.

Regardless of the specific IDR procedures followed and set forth in **ATTACHMENTS I – III**, the IDR process may **not** be used to challenge any other aspect of the survey process, including: (1) the classification of deficiencies (i.e., scope and severity) except as specified; (2) the remedy sought to be imposed; (3) failure of the survey team to comply with a requirement of the survey process; (4) inconsistency of the survey team in citing deficiencies among facilities and/or agencies; or (5) inadequacy or inaccuracy of the IDR process.

Allowable Topics For IDR

1. Cited deficiencies that require a plan of correction;
2. Severity and scope assessments of deficiencies that constitute Substandard Quality of Care or Immediate Jeopardy;
3. Continuation of the same deficiency at revisit;
4. New deficiency at revisit.

Topics Ineligible For IDR

1. Severity and scope assessments of deficiencies with the exception of deficiencies that constitute Substandard Quality of Care or Immediate Jeopardy.
2. Deficiencies that contain gratuitous commentary, whether positive or negative, addressing the survey process, compliance with the survey process, individual surveyors, the survey team, consistency among survey members and/or survey teams or within the Division, or the authority of the Division and/or its surveyors.

POST-IDR ACTION FOR ALL PROVIDERS REQUESTING IDR

A. ALL LTC/ALR PROGRAMS

All LTC and ALR programs for health and life safety surveys require a Plan of Correction (POC) be submitted in the same 10-day time frame as the facility's request for IDR. (See **ATTACHEMENT I – IDR PROCEDURES FOR LTC/ALR PROGRAMS**)

If the deficiency list is modified during IDR, the original CMS 2567 or Statement of Deficiencies will be amended to reflect the change.

If the facility has filed their POC electronically, a clean copy will be reposted to the Internet. The facility will receive an E-mail notice providing the facility the option to amend their POC (if applicable). The

amended copy of the deficiency list will be the releasable copy when the original POC is amended electronically, re-submitted to the Division, and a re-signed page 1 of the CMS 2567 is returned. If the facility elects not to amend its POC and submit a re-signed page 1 of the CMS Form 2567 within the time frame specified in the E-mail, the annotated deficiency list and POC will be the releasable copy.

If the facility did not submit their POC electronically, the facility must sign and return the clean (new) copy of the deficiency list reflecting the IDR amendments. At the same time, the facility may also elect to change the original POC to reflect the IDR changes (if applicable). The clean (new) deficiency list with facility changes to the POC must then be signed and returned to the Division. If the facility elects not to amend its POC and within the time frame specified in the facility letter that accompanied a clean copy of the deficiency list, the amended deficiency list and POC will be the releasable copy. The clean (new) copy will be the releasable copy only when a clean (new) POC is both provided and signed by the facility.

B. PROGRAMS OTHER THAN LTC/ALR

All programs other than LTC/ALR for health and life safety surveys may record objections to cited deficiencies on the deficiency list with or without submitting a POC. (See **ATTACHMENT II – IDR PROCEDURES FOR PROGRAMS OTHER THAN LTC/ALR)**

If objections filed with or without a POC result in modification of the deficiency list, the original CMS 2567 or statement of deficiencies will be amended to reflect the change(s). The Section Chief, Program Manager or designee will amend the deficiencies in Aspen Central Office (ACO) to reflect the change(s) and will notify Information Technology (IT) staff. IT staff will be responsible for reposting the amended deficiency list on the Internet.

The provider will receive a clean (new) copy of the deficiency list, reflecting the IDR amendments.

C. ALL PROGRAMS

A letter identifying the Division's final decision will be sent to the provider via U.S. Mail. For LTC/ALR programs, the letter will include instructions regarding the return of the clean (new) deficiency list and POC, if applicable. A copy of the letter will be forwarded to the State Ombudsman's program and, if appropriate, CMS and Health Care Policy and Financing (HCPF). For programs other than LTC/ALR, a copy of the letter will be forwarded, as is appropriate, to either CMS or HCPF. All IDR letters shall be kept in ACO under the survey for which IDR was conducted.

The IDR Coordinator will make changes to the LTC/ALR deficiency list. The Section Chief or designee will make changes to nonLTC/ALR deficiency lists. The Program Manager or designee will make necessary changes to any complaint investigation report. The IDR Coordinator, Program Manager or surveyor will notify the responsible support staff, including IT (via email or other written means) when the changes are completed.

Support staff will monitor return of the clean (new) copy of the deficiency list and POC for LTC and ALR programs.

As part of the Division's quality assurance, data analysis and training activities, an explanation for each amended deficiency shall be communicated to the author of the deficiency by the IDR Coordinator for LTC and ALR programs. The Section Chief or Program Manager will select a method to review IDR results for all programs other than LTC/ALR.

The IDR Coordinator (LTC/ALR)/designee and Section Chief/designee (nonLTC/ALR) or Program Managers will forward to administrative staff the following information on IDR requests: The date the request was received; the agency/facility name and type of survey; the survey exit date, the date of the IDR review; the tag challenged (and scope and severity if applicable); and the outcome of IDR.

Support personnel will track all IDR requests through excel and compile reports on the data from IDR review when requested.

Failure of the Division to meet any of the time frames set forth in the policy and **Attachments I – III** shall not invalidate the intermediate restriction/condition or the deficiency on which it is based.

This Policy & Procedure is subject to change by the Division at any time.

ATTACHMENTS

I. **ATTACHMENT I** - IDR Procedures for LTC/ALR
II. **ATTACHMENT II** - IDR Procedures for Programs other than LTC/ALR
III. **ATTACHMENT III** - IDR Procedures for Life Safety Code (LSC) violations

A. IDR Procedures for Life Threatening citations
B. Conflict of Interest Statement
C. Code of Conduct Agreement

Approved:_____/Date_____

ATTACHMENT I

IDR PROCEDURES FOR LTC AND ALR

I. FEDERALLY CERTIFIED LTC FACILITIES NOT SUBJECT TO CIVIL MONEY PENALTIES AND ALR FACILITIES NOT SUBJECT TO INTERMEDIATE CONDITIONS

A. COMMITTEE REVIEW

A Committee shall conduct initial review and issue recommendations on the IDR request. The Division or the Center for Medicaid and Medicare Services (CMS) Regional Office will make the final determination on the IDR request.

Deficiencies not subject to committee review include LTC citations that represent substantial compliance that is isolated (A level deficiencies), non-certified state LTC deficiencies, and ALR deficiencies subject to intermediate conditions.

IDR Committee

A Division staff person (IDR Coordinator) will be responsible for focusing committee discussion on the disputed deficiency identified in the IDR request and on the governing regulatory requirements. The IDR Coordinator will be responsible for resolving issues that may arise regarding committee policy and procedures and for updating the committee on directives from CMS.

The LTC IDR committee will be comprised of 7 voting members and 7 alternate members, and other Division personnel as directed by the Director or designee. Except as provided below, voting members shall include two Division representatives, three facility representatives and two representatives appointed from state agencies, such as the Department of Health Care Policy and Financing, Medicaid Fraud Unit, State Ombudsman Program or relevant state licensing board. Alternate members shall include two Division representatives, three facility representatives and two representatives from the state agencies listed above. The Division Director or designee will resolve tie votes by the Committee.

The ALR IDR committee will be comprised of 4 voting members and 4 alternate members, and other Division personnel as directed by the Director or designee. Voting members shall include one Division representative, two facility representative, and one representative from the State Ombudsman office. Except as provided below, alternate members shall include one Division representative, two facility representatives and one representative from the State Ombudsman office. The Division Director or designee will resolve tie votes by the Committee.

A representative from the Division, other than the voting and alternate Division members, may sit as a voting member for the Division, when the voting and alternate LTC or ALR committee members from the Division have recused themselves due to an actual or potential conflict of interest.

Division representatives shall be selected from staff assigned to the Division's LTC and ALR programs, and shall have at least one year of experience in the Division. LTC facility representatives shall hold the position of administrator, nursing director, or clinical consultant (without broad involvement in multiple facilities) and shall have, at the beginning of their membership, at least six months of experience in their position at their current facility. ALR facility representatives must have experience as either an ALR administrator or an ALR consultant.

All Committee members, including those from other state agencies, must have knowledge of applicable State and/or Federal regulations.

Representatives to the committee shall be selected by the LTC and ALR Program Managers, with the assistance of the IDR Coordinator. Selection of facility representatives shall be based on the qualifications and experience of applicants, as well as a review of facility history. Resumes will be requested from all individuals expressing interest in participating on the committee. The Division shall maintain a file of applicants for future vacancies.

New committee members shall attend one committee meeting prior to formal appointment to the committee unless the new member has previously observed the committee and/or is familiar with committee procedures.

The primary voting members of the Committee shall:

- Attend all Committee meetings
- Engage in fair and impartial review of all IDR requests based upon:
    - The CMS 2567 or Statement of Deficiencies
    - Documentation and/or information relating to the facility's position
    - Surveyor written response to the facility position and/or documentation
- Engage in pre-meeting preparation that allows for pertinent discussion and preparation for voting.
- If unable to attend a meeting or engage in committee business due to a conflict of interest (see: Conflict of Interest Statement, **ATTACHMENT B**), notify the designated alternate and the Division in sufficient time to enable the alternate to be present and participate in committee business.

Committee members may be removed from the committee following three consecutive absences unless such absences are for good cause, as determined by the Division Director or designee.

Alternates

Alternate members of the committee shall be of the same class of representation as the voting member for whom he/she was named, and will be invited to attend committee meetings but are not required to attend unless functioning as a primary voting committee member. Except as provided below, alternates are not allowed to participate in committee discussion unless the primary voting member is absent or is required (due to a conflict of interest) to abstain from deliberations. Under these circumstances, the alternate shall comply with expectations for primary voting members of the committee.

The voting member and the alternate member may elect to share their positions, rotating their attendance or attending each meeting, but dividing the IDR requests.

Requirements and Removal

Committee members are required to sign a Conflict of Interest Statement (See **ATTACHMENT B**) and a Code of Conduct Agreement (See **ATTACHMENT C**), and are expected to follow committee procedures. Any member may be removed from the committee prior to term expiration for violation of the Conflict of Interest Statement, Code of Conduct Agreement or committee procedures. The Division Director or designee shall make all decisions regarding member removal.

Term

LTC IDR committee members shall serve two-year terms. ALR IDR committee members shall serve four-year terms. However, all committee members may serve an extended term at the Division Director or designee's discretion.

The Division Director or designee shall address extended absences for good cause by committee members.

Committee members must understand that a facility may appeal the imposition of remedies, and that committee members may be called to testify at such appeal.

Meeting times and location.
IDR for LTC Facilities. The Committee shall meet the **first Tuesday of each month at 1:30 p.m.** in a room designated by the Division at the Colorado Department of Public Health and Environment ("CDPHE").
IDR for ALR Facilities. The Committee shall meet the **fourth Thursday of each month at 10:00 a.m.** in a room designated by the Division at the Colorado Department of Public Health and Environment ("CDPHE").

A quorum consisting of three voting members plus the IDR Coordinator must be present in order for committee business to commence. If the volume and nature of requests for IDR warrants, a second monthly meeting may be scheduled. Notification of these meetings will be posted online at **www.healthfacilities.info.**

Committee meetings are open to the public. However, the public shall not participate in committee discussion or interact with committee members regarding committee business until after the conclusion of the meeting. All committee members and guests shall sign in prior to commencement of committee business.

B. PROCEDURES FOR SUBMITTING AN IDR REQUEST

Limitations on IDR Requests
Facilities submitting an IDR request must challenge the deficient practice, not the severity or scope of the deficiency cited unless the deficient practice represents immediate jeopardy or substandard quality of care. Therefore, if the deficiency is not cited at immediate jeopardy or substandard quality of care, a facility can challenge fewer than all the residents cited in the deficiency **only if a successful IDR would not affect the scope or severity of the deficiency**.

IDR requests shall not contain gratuitous commentary whether positive or negative, addressing the survey process, compliance with the survey process, individual surveyors, the survey team, consistency among survey members and/or teams or within the Division, or the authority of the Division and/or its surveyors.

IDR requests that do not meet requirements for submission may be returned to the facility for revision or the prohibited commentary, argument, or documentation removed by the IDR Coordinator. This action may delay committee review. If returned to the facility, this will be the facility's only opportunity to resubmit an IDR request for committee review.

The committee shall not consider IDR requests that the IDR Coordinator determines include documentation that does not meet the requirements for submission or which, in the IDR Coordinator's discretion, involve issues that are more appropriate for internal review. An impartial Division representative shall review any IDR request that is determined by the IDR Coordinator to be inappropriate for committee review.

The ALR IDR committee will not review deficiencies that relate directly to the imposition of intermediate conditions. Such deficiencies will be reviewed in accordance with **Section II. C. ALR FACILITIES SUBJECT TO INTERMEDIATE CONDITIONS.** (See below)

Situations Appropriate for IDR Request

Cited deficiencies that require a plan of correction (POC), severity and scope assessments of deficiencies that constitute Immediate Jeopardy or Substandard Quality of Care (LTC), continuation of the same deficiency at revisit, and new deficiencies on revisit are situations appropriate for requesting IDR by committee.

Procedures for Submitting IDR Requests

The Division shall notify the facility of the right to request IDR at the same time that the Division provides the facility with the Statement of Deficiencies.

1. The **IDR request and the facility's argument must be submitted to the Division in a document separate from the Statement of Deficiencies (CMS 2567), no later than ten (10) days after receiving a deficiency list.** The IDR request must identify the specific deficiencies that the facility is disputing and the basis for dispute.

2. The request must contain: (1) an explanation addressing why the documentation was unavailable during the survey, if applicable; (2) an explanation addressing the relevance of the documentation to the disputed deficiency; (3) the date of the documentation (either prior to or after the survey); and (4) a summary statement addressing the nature of the facility dispute.

3. **The facility's argument, explaining why the deficiency should not have been cited or should not cited at Immediate Jeopardy or Substandard Quality of Care (LTC), should not be presented on the Statement of Deficiencies (CMS 2567), but rather in a separate document that references the facility's relevant and attached supporting documentation**.

4. The facility is responsible for submitting **two (2) complete copies** of the IDR request and two copies of each deficiency in the Statement of Deficiencies (CMS 2567) that the facility is disputing.

One copy of the request and Statement of Deficiencies must be redacted with all textual and numerical identifiers (such as names and phone numbers) removed. Removing identifiers with a black marker is sufficient; however, this may not remove the identifiers as well as a copy of the redacted request. Therefore, it is suggested that the redacted IDR request be a copy of the original redacted request. The Division is not responsible for either poor redaction or omitted redaction of identifying information. This requirement is applicable to each submitted document.

5. The facility documentation submitted with the IDR request should be clearly identified, labeled and cross-referenced to the disputed deficiency. Notate what is relevant to the disputed deficiency; circling relevant information is preferable to highlighting which may not copy well. Isolate the appropriate narrative in the documentation and reference it in the summary statement addressing the nature of the facility dispute.

6. The facility may organize the IDR request in any manner that meets the above requirements. However, the request should not be placed in a binder or include dividers. Please place a blank sheet of paper between exhibits and label the blank sheet of paper with the exhibit number.

7. The facility must provide the name and phone number of an individual at the facility that the Division may contact concerning the IDR request.

IDR Request Review

The facility's complete, redacted IDR request shall be placed in the Division's confidential File Exchange no later than the Friday before the next scheduled committee meeting for committee member review. IDR requests that do not meet this timeline, e.g., requests that are received but, because of processing, cannot be placed in File Exchange as described above, shall not be considered until the next meeting of the committee. The author of the deficiency shall be notified when an IDR request has been placed in the File Exchange. The author shall have the opportunity to review and submit written comments.

- If the author agrees that the deficiency should not have been cited, the author, with approval of the appropriate Program Manager, will submit to the IDR Coordinator a written explanation in support of deletion of the deficiency.
- If the author disagrees with the facility's position regarding a deficiency that was cited, the author may elect to forward to the IDR Coordinator a limited, factual response to the facility position and documentation, if appropriate. The surveyor response shall not include gratuitous commentary, whether positive or negative. This document will be made available to the IDR Committee as part of the review process.

Non-facility-specific issues that relate to IDR requests shall be raised and addressed at the beginning of the committee meeting.

Committee Recommendations

The committee may recommend one or more of the following outcomes for each disputed deficiency:

- Sustain the deficiency as written;
- Delete the deficiency;
- Modify the deficiency as follows:
  - Combine finding(s) with an existing deficiency
  - Move finding(s) to a more appropriate regulatory reference
  - Reduce the severity and scope assessments
  - For ALRs only, delete specific findings in the deficiency*
  - For LTC, delete specific residents*

  *Deletion of specific residents and specific findings is dependent upon a determination that the deletion will not affect the classification (scope or severity) of the deficiency (unless the deficiency has been cited at a level of immediate jeopardy or substandard quality of care).

The recommendation of the committee, and the basis for the recommendation, shall be in writing and forwarded to the Division Director or designee for final review.

II. LTC FACILITIES AND ALR FACILITIES SUBJECT TO CIVIL MONEY PENALTIES (LTC) OR INTERMEDIATE CONDITIONS (ALR)

A. LTC FACILITIES SUBJECT TO A CIVIL MONEY PENALITY - PROCEDURES FOR INDEPENDENT IDR

Independent Review

All LTC facilities that receive notice from CMS of the imposition of a Civil Money Penalty (CMP) shall have the option - **for those deficiencies that are directly associated with the CMP -** to select IDR by

committee (as set forth above) or IDR by an independent reviewer (Independent IDR). All other deficiencies for which IDR is requested and which are not associated with the CMP shall be reviewed by committee.

If a facility selects Independent IDR, the request will be reviewed by an individual not employed by the Division who has training and expertise in Medicare and Medicaid program requirements.

The individual reviewer will review:
-All documents submitted by the facility to dispute a deficiency, to demonstrate that a deficiency should not have been cited or to demonstrate that the deficiency should not have been cited as immediate jeopardy or as substandard quality of care. The facility's request for Independent IDR is subject to the same limitations set forth above in **Section I.**
-Written comments submitted by the State Ombudsman, residents and/or their representatives, and the author of the deficiency.
-Each deficiency or finding that is the basis of the IDR request and any other pertinent information in the CMS 2567.

The individual reviewer will evaluate the above materials and make recommendations for each deficiency or findings that are the basis for the Independent IDR request and document the rationale for each recommendation. The Division shall complete a review of the recommendations and rationale received from the reviewer, and shall notify the facility, CMS, the State ombudsman and the reviewer of the final results. If the Division disagrees with the recommendations of the reviewer, all of the documents and the reviewer's summary will be sent to the CMS Regional Office for review and a final decision.

The Independent IDR review must be completed within 60 days of the offer. Completed means a final decision from the independent reviewer (or CMS if applicable) has been made, a written report/record generated, and the Division has provided written notice of this decision to the facility.

Procedures for Requesting Independent IDR
The CMS Regional Office will communicate the offer for an Independent IDR in its initial "Notice of Imposition of CMP" letter to the facility.

1. The request for Independent IDR **must be identified as an Independent IDR request** and must be submitted to the Division with all supporting documentation **within 10 calendar days of the receipt of the offer**. **The date on the CMS letter is day 1 of the 10 calendar days.**

2. The facility is responsible for submitting **two (2) complete copies** of the IDR request and two copies of each deficiency in the Statement of Deficiencies (CMS 2567) that the facility is disputing.

One copy of the request and Statement of Deficiencies must be redacted with all textual and numerical identifiers (such as names and phone numbers) removed. Removing identifiers with a black marker is sufficient; however, this may not remove the identifiers as well as a copy of the redacted request. Therefore, it is suggested that the redacted IDR request be a copy of the original redacted request. The Division is not responsible for either poor redaction or omitted redaction of identifying information. This requirement is applicable to each submitted document.

3. The request for Independent IDR should be consistent with the requirements for IDR review by committee set forth above in **Section I**; facility documentation submitted with the IDR request should be clearly identified, labeled and cross-referenced to the disputed deficiency and should not be placed in a binder or include dividers. In addition, the name and phone number of an individual at the facility that the Division may contact concerning the IDR request must be included.

B. ALR FACILITIES SUBJECT TO INTERMEDIATE RESTRICTIONS/CONDITIONS

1. Two-Person Panel Review

Section 25-27-106(2)(b) C.R.S. authorizes the imposition of intermediate restrictions or conditions (conditions) on a licensee by the Division. Section 25-27-106(2)(b)(III)(A) C.R.S. allows licensees to first appeal intermediate conditions through an informal review process.

Informal review of IDR requests that include intermediate conditions will be conducted by a two-person panel of individuals from the Division who were not involved in the survey that is the basis for the IDR request. One individual will be a supervisor with appropriate expertise and the other individual will be a surveyor in the ALR program. Concurrent deficiencies that are unrelated to the intermediate conditions may be reviewed during the informal panel review.

However, if the facility subject to an intermediate condition does not request IDR on the intermediate condition or the deficiency associated with the intermediate condition, the request will be reviewed by the ALR IDR committee, absent the facility's request for a hearing or panel review.

Procedures for Submitting IDR Request with No Civil Penalty

The procedures for requesting IDR when an intermediate condition but no civil fine has been imposed are as set forth above in **Section I.** The facility may submit the IDR request for deficient practice and the intermediate conditions as one document, but must clearly differentiate arguments pertaining to each.

Procedures for Submitting IDR Request with Civil Penalty

Pursuant to 25-27-106(2)(b)(III)(B) C.R.S., a facility that receives an intermediate condition on its license of **a civil fine** may request IDR be conducted in person (IDR hearing) before the two-person panel described above**.** The procedures for requesting IDR when a civil fine has been imposed are as set forth above in **Section I.** The facility may submit the IDR request for deficient practice and the intermediate conditions as one document, but must clearly differentiate arguments pertaining to each.

The Division will notify the facility of the time and place of the IDR hearing which will be scheduled within 30 days of the facility's request for IDR. The facility shall have the opportunity to provide a written summary of oral remarks, not to exceed three (8.5x12) pages no later than 2 business days from the hearing date.

The facility will have 30 minutes to present its argument in-person to the two-person panel. The deficiency author(s) will also be allowed 30 minutes to present arguments to the committee. Legal counsel shall not represent either party at the hearing. The testimony shall be directly relevant to the issues. **The facility may not introduce new information and discussion is limited to information submitted with the IDR request or referenced in the written summary of oral remarks.**

Recommendations by Two-person Panel

Each panelist reviewing an IDR request shall forward a written recommendation to the Division Director or designee for final determination.

The recommendation may include one or more of the following outcomes **for each deficiency** under dispute:

-Sustain, as written;
-Delete;

-Modify, as follows: Combine finding(s) with an existing deficiency; move finding(s) to a more appropriate regulatory reference; reduce the severity and scope assessments, or delete specific findings.

The recommendation may include one or more of the following outcomes **for each condition** under dispute: Sustain; delete; or modify the condition.

2. APA Hearing

Section 25-27-106(2)(b)(III)(C) C.R.S. provides that if the licensee who is subject to an intermediate condition is not satisfied with the result of the informal review or chooses not to seek informal review, the licensee may seek a hearing under the Administrative Procedure Act (APA) on the intermediate conditions and the deficiencies upon which the intermediate conditions are based. Concurrent deficiencies that are unrelated to the intermediate conditions/restrictions may not be appealed under the APA; however, these deficiencies may be reviewed through the informal committee review process set forth above (Section I) if the review is timely requested.

Requests for a hearing under the APA following an IDR hearing must be made within 30 days from the date of receipt of the letter concerning the findings and conclusions from the informal hearing.

Requests for a hearing under the APA that bypass the IDR hearing must be made within 30 days from the date of receipt of the letter concerning the imposition of the intermediate conditions.

Follow-up to Imposed Conditions

The Division shall provide the ALR with written notice that the civil money penalty imposed must be paid if a facility:

-Does not request IDR within the deadlines specified above;
-Requests IDR but forfeits the opportunity because the request is not in accordance with the policy and procedure specified herein; or
-Requests IDR timely but receives an unsuccessful result and does not timely request an APA hearing
-Does not receive a successful result in an APA hearing.

Additional Post-IDR Procedures are set forth in the IDR policy, **POST-IDR ACTION FOR ALL PROVIDERS REQUESTING IDR.**

III. LTC FACILITIES - NON-CERTIFIED, STATE-LICENSED

IDR for LTC facilities with deficiencies arising solely under state regulations shall be reviewed internally by the Division.

The deadline to submit an IDR request for non-certified, state-licensed only LTC nursing homes that receive deficiencies under state regulations is **10 days from the date the facility received the deficiency** list. The facility must submit one complete copy of their request, which meets the requirements for documents submitted for committee review (See Section I above).

ATTACHMENT II - IDR PROCEDURES FOR PROGRAMS OTHER THAN LTC/ALR

PROCEDURE
The author of the deficiencies that are the focus of the IDR request shall conduct an initial review and forward a response to the Section Chief, Program Manager or designee for final determination.

TIMING OF REVIEW
IDR requests shall be reviewed in a timely manner.

Requirements For Submitting An IDR Request
1. Providers may record objections to cited deficiencies on the deficiency list (CMS 2567/State Form) without submitting a plan of correction. The provider must state the reason for the objection and submit information in support by letter to show convincing and undisputable documented evidence (dated prior to the date of survey) that the deficiencies are invalid.

Note: the option to record objections pertains only to the opportunity to refute the accuracy of findings incorporating the deficiency. Providers/suppliers may not refute the professional judgment of the surveyor regarding the level, extent, scope, or severity of the deficiency.

2. Providers may record objections to cited deficiencies, in the manner described above, on the deficiency list (CMS 2567/State Form) with the submission of a plan of correction.

3. Documentation must be legible, clearly identified, labeled and cross-referenced to the disputed deficiency. Notate what is relevant to the disputed deficiency. Isolate the appropriate narrative in the documentation and reference it in the summary statement addressing the nature of the provider dispute.

4. Indicate whether the documentation was provided to surveyors at the time of the survey; if not, explain why it was not provided. Indicate whether the dates on the documentation are prior to or after the survey.

5. The organization of documentation that is submitted, including highlighting or separation of documentation with dividers, shall be the sole responsibility of the provider.

6. Provide the name and phone number of an individual at the provider whom the Program Manager may contact concerning the IDR request.

Items Prohibited Within An IDR Request:

-Gratuitous commentary, whether positive or negative, addressing the survey process, compliance with the survey process, individual surveyors, the survey team, consistency among survey members and/or survey teams or within the Division, or the authority of the Division and/or its surveyors;
-Requests and/or argument to review the seriousness of a deficiency;
- Names of individuals or other agency/facility providers.

IDR requests that the Section Chief, Program Manager or designee determines includes documentation that does not meet the requirements for submission and/or includes prohibited items, as set forth in the IDR Policy shall not be considered. Such IDR requests may be returned to the provider for revision or the prohibited argument/documentation removed by the Section Chief, Program Manager or designee. This action may delay review.

IDR Review

The IDR request will also be forwarded to the author of the deficiency, who shall have the opportunity to review and submit written comments.

- If the author agrees that the deficiency should not have been cited, the author will submit to Section Chief, Program Manager or designee a written explanation in support of deletion of the deficiency.
- If the author disagrees with the provider's position regarding a deficiency that was cited, the author may elect to forward to the Section Chief or Program Manager a limited factual response to the provider's position and documentation, if appropriate. The surveyor response shall not include gratuitous commentary, whether positive or negative.

Recommendations

The Section Chief or Program Manager may recommend one or more of the following outcomes for each disputed deficiency:

- Sustain the deficiency as written;
- Delete the deficiency;
- Modify the deficiency as follows but not limited to:
  - Combining finding(s) with an existing deficiency
  - Moving finding(s) to a more appropriate regulatory reference
  - Reducing the severity and scope assessments

Post-IDR Action

See the IDR Policy **POST-IDR ACTION FOR ALL PROVIDERS REQUESTING IDR**.

If objections filed with or without a POC result in modification of the deficiency list, the original CMS 2567 or statement of deficiencies will be amended to reflect the change(s). The Section Chief, Program Manager or designee will amend the deficiencies in Aspen Central Office (ACO) to reflect the change(s) and will notify Information Technology (IT) staff. IT staff will be responsible for reposting the amended deficiency list on the Internet.

The provider will receive a clean (new) copy of the deficiency list, reflecting the IDR amendments.

The Section Chief, Program Manager, or designee will forward to administrative staff the following information on IDR requests: The date the request was received; the provider name and type of survey; the survey exit date; the date of the IDR review; the tag challenged (and scope and severity if applicable); the outcome of IDR, and the date of the final letter. The Section Chief, Program Manager or designee shall draft the final letter.

ATTACHMENT III - IDR PROCEDURES FOR LIFE SAFETY CODE (LSC)

PROCEDURE
One Inspector from the LSC program shall conduct the review, absent the LSC Program Manager's final review. Recommendations will be forwarded to the Program Manager, except in instances where CMS has imposed a Civil Money Penalty (CMP) for deficiencies arising from a life safety survey in a LTC facility and the facility has selected Independent IDR. See **ATTACHMENT I, Section II.LTC FACILITIES SUBJECT TO A CMP - PROCEDURES FOR INDEPENDENT IDR** for information on these review procedures.

Inspector
The IDR Coordinator, the LSC Program Manager or designee shall select the Inspector to conduct the IDR review. The Inspector chosen will be a staff member who did not participate in the survey being disputed. Whenever possible, the Inspector will have at least one year of experience in the Division.

The LSC inspector shall engage in fair and impartial review of the IDR request. Review shall be based upon: the CMS 2567 or Statement of Deficiencies, documentation and/or information relating to the provider's position, and the surveyor's written response to the provider's position and/or documentation.

Timing of Review
IDR requests shall be reviewed in a timely manner after the request is received.

Requirements For Submitting An IDR Request

1.The IDR request must be in writing, identify the specific deficiencies that the facility is challenging and the basis for the dispute. A facility cannot submit a request to review the seriousness of the deficiency. IDR requests that do not comply with this requirement shall be returned or the prohibited argument/documentation removed by the Program Manager or designee to comply with this requirement.

2. The IDR must be submitted to the Division in a separate letter within ten (10) days after receiving a deficiency.

3.The request must contain: (1) an explanation addressing why the documentation was unavailable during the survey, if applicable; (2) an explanation addressing the relevance of the documentation to the disputed deficiency; and (3) a summary statement addressing the nature of the facility dispute.

4. Documentation must be legible.

5.The facility is responsible for submitting one (1) redacted copy of the IDR request. The IDR request also must include one complete copy of the request that is not redacted (see below).

6. Documentation submitted for each disputed deficiency must have all textual and numerical identifiers redacted. The Division shall not review submissions to ensure the redaction of confidential information.

Identifiers include, but are not limited to: name, address, and telephone number of the facility and/or agency; "Provider number," "Agency," "Facility," and address appearing on each page of a deficiency list; staff, physicians, and resident(s) names; and any other information that enables identification of the

agency, health care provider or resident. This requirement is applicable to each submitted document. Redaction of facility and/or agency identifiers is at the facility and/or agency's discretion.

A copy of the CMS 2567/statement of deficiencies must be submitted (and redacted) for each disputed deficiency.

7. Documentation submitted should be clearly identified, labeled and cross-referenced to the disputed deficiency. Notate what is relevant to the disputed deficiency. Isolate the appropriate narrative in the documentation and reference it in the summary statement addressing the nature of the facility dispute.

8. Indicate whether the documentation was provided to surveyors at the time of the survey; if not, explain. Indicate whether the dates on the documentation are prior to or after the survey.

9. The organization of documentation that is submitted, including highlighting or separation of documentation with dividers, shall be the sole responsibility of the facility.

10.Provide the name and phone number of an individual at the facility whom the LSC Program Manager or designee may contact concerning the IDR request.

Items Prohibited Within An IDR Request:

-Gratuitous commentary, whether positive or negative, addressing the survey process, compliance with the survey process, individual surveyors, the survey team, consistency among survey members and/or survey teams or within the Division, or the authority of the Division and/or its surveyors.
-Requests and/or argument to review the seriousness of a deficiency, either with or without a request to review the deficiency.

The Inspector shall not consider an IDR request that the IDR Coordinator, LSC Program Manager, or designee determines includes documentation that does not meet the requirements for submission and/or includes prohibited items, as set forth in the IDR Policy. Such IDR requests may be returned to the facility for revision or the prohibited argument/documentation removed by the IDR Coordinator, LSC Program Manager, or designee. This action may delay Inspector review and may preclude a facility's use of the IDR process for that given deficiency.

IDR Review

A copy of the IDR request shall be distributed to the Inspector as soon as possible to meet the requirements for timely review. The IDR request will also be forwarded to the author of the deficiency, who shall have the opportunity to review and submit written comments.

- If the author agrees that the deficiency should not have been cited, the author will submit to the Program Manager or designee a written explanation in support of deletion of the deficiency.
- If the author disagrees with the facility's position regarding a deficiency that was cited, the author may elect to forward to the Program Manager or designee a limited factual response to the facility's position and documentation, if appropriate. The surveyor response shall not include gratuitous commentary, whether positive or negative. This document will be made available to the Inspector reviewing the IDR request, as part of the review process.

Inspector Recommendations

The Inspector may, but is not limited to, recommendations that include one or more of the following outcomes for each disputed deficiency:

- Sustain the deficiency as written;

- Delete the deficiency;
- Modify the deficiency as follows but not limited to:
    - Deleting findings
    - Combining finding(s) with an existing deficiency
    - Moving finding(s) to a more appropriate regulatory reference
    - Reducing the severity and scope assessments

The recommendation of the Inspector and the basis for the recommendation shall be the final, absent the LSC Program Manager's final review.

POST-IDR ACTION

See IDR Policy – Post-IDR ACTION FOR ALL PROVIDERS REQUESTING IDR

ATTACHMENT A

PROCEDURES FOR INFORMAL DISPUTE RESOLUTION FOR ALR LIFE THREATENING CITATIONS

The following outlines the procedures to be used for the review of ALR IDR requests of Life Threatening citations.

1. An IDR request for such citations must be made in the same manner and at the same time as is required for IDR requests of other citations (see ATTACHMENTS I - III).

2. The request will be forwarded to the IDR Coordinator, who will do an initial review of the request for timeliness and completeness, as is done with all IDR requests received.

3. After the initial review, copies of the request will be forwarded to a surveyor and to a supervisor who were not involved in the survey, who will individually review the request and provide a recommendation. For IDR requests related to Life Safety Code citations, one Life Safety Code Inspector who was not involved in the survey will conduct the review.

4. The recommendations will be forwarded to either the Division Director or designee for final determination.

The letter identifying the Division's final decision will be written by the Division Director or designee. The letter will be transmitted via U.S. Mail. The Division will make every attempt to provide this review within the same time frame as would be required for review of non-life threatening IDR requests.

ATTACHMENT B
CONFLICT OF INTEREST STATEMENT

Conflicts of interest may arise when an IDR Committee member engages in behaviors or activities that are determined by the Health Facilities and Emergency Medical Services Division to be incompatible with an expectation of fair, impartial review and discussion of matters addressed as a part of committee activities. Such conflict(s) may occur under circumstances in which a committee member has personal knowledge or was directly or indirectly involved in a survey or complaint investigation that formed the basis for the IDR request. Additional circumstances include, but are not limited to, the following:

- Knowledge of circumstances or facts pertinent to an IDR request that might influence the discussion or vote on the disputed deficiency;
- The committee member is employed or affiliated with the facility requesting IDR;
- The committee member authored the deficiency that is the subject of an IDR request;
- The committee member was a member of the survey team that authored the deficiency that is the subject of an IDR request;
- The committee member has a family member or close acquaintance with a personal or financial relationship to the facility that is the subject of an IDR request;
- The committee member has served within the last two years as a consultant or agent for the facility that is the subject of an IDR request;
- Any other circumstances that might be construed as incompatible with maintaining public confidence in the integrity of the IDR process

In recognition of the above information, I, understand that it is my obligation to update this form at least annually and I further understand that I must notify the IDR Coordinator immediately upon the discovery that a conflict or potential conflict of interest may arise with respect to a particular IDR activity or deficiency review. I further understand that my failure to do so impairs the integrity of the committee process and that I may be subject to immediate termination as a member of the IDR Committee for failure to comply with the intent and procedures stated in this Conflict of Interest Agreement.

The following is intended to provide information addressing potential conflicts of interest in matters that may be the subject of an IDR request:

_____

_____

_____

I certify that the information entered on this Agreement is true and correct to the best of my knowledge.

_____
Name (Please print) Date

_____
IDR Coordinator Signature Date

ATTACHMENT C

CODE OF CONDUCT AGREEMENT

As a member of the IDR Committee I acknowledge the following expectations pertaining to rules of conduct:

- Discussion will be focused on issues raised as part of the Deficiency List, documentation submitted by the requesting facility and the surveyor written response to the facility position and/or documentation.

- Comments will reflect only information pertinent to the Deficiency List, documentation submitted by the requesting facility and the surveyor written response to the facility position and/or documentation.

- The IDR Coordinator, in cooperation with Committee members, shares responsibility for focusing committee activities on relevant factual and regulatory issues.

- Discussion and comments shall not address the survey process, compliance with the survey process, individual surveyors, the survey team, consistency among survey members and/or teams or the Division.

- Committee voting is expected to reflect consideration of the Deficiency List, documentation submitted by the requesting facility and surveyor response to the facility and/or documentation.

- Committee members shall not seek comment from, or communicate commentary to, representatives of the requesting facility prior to or during formal committee meetings.

- Committee members shall ensure the confidentiality of documentation submitted by the requesting facility while the documentation is in the member's possession. All documents and copies that are in committee members' possession will be returned after the IDR committee meeting is completed or otherwise destroyed by the member in a confidential manner.

- The Department is not responsible for ensuring confidentiality once the documents are mailed or made available through the File Exchange to committee members.

_____

Name (please print)

_____

Signature Date